

Practice Update

Strategies For Obtaining SIJS Factual Findings in Virginia After the 2021 Amendment to Code of Virginia § 16.1-241

July 28, 2021

This practice update¹ explains the recent amendment to Va. Code § 16.1-241 which extended the Virginia juvenile courts' jurisdiction for young people seeking factual findings that satisfy eligibility requirements for Special Immigrant Juvenile Status (SIJS). It provides some practice strategies to help advocates obtain SIJS factual findings (sometimes referred to as “predicate orders”) under § 16.1-241(A1) of the Code of Virginia, which went into effect on July 1, 2021. The amendment² facilitates access to a state legal process required for immigrant youth who have been abused, neglected, or abandoned to seek protection and ultimately obtain lawful permanent status when the state legal process extends beyond their 18th birthday.

I. Overview of SIJS

Special Immigrant Juvenile Status (SIJS) is a form of immigration relief that establishes a pathway to residency and citizenship for immigrant youth who are in the United States and in need of the protection of a juvenile court because of past abuse, neglect and/or abandonment by one or both parents.³ Congress first established SIJS through the Immigration Act of 1990 as a means by which to provide humanitarian protection for abused, neglected, and/or abandoned child immigrants eligible for foster care.⁴ Congress has since expanded this important relief to include children who cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, regardless of whether they are ever placed in foster care.⁵ Under federal law, in order to qualify as a Special Immigrant Juvenile (SIJ), an individual:

1. Must be present in the United States;
2. Must be unmarried;

¹ The authors of this practice update are Sophia Gregg and Becky Wolozin, Legal Aid Justice Center; Tanishka Cruz, Cruz Law PLLC; Cindy Liou, Kids in Need of Defense; Rachel Thompson, Poarch Law Firm; and Julie McConnell, University of Richmond Law School. This practice advisory identifies select substantive and procedural issues that attorneys, legal representatives, and noncitizens face. They are based on legal research and may contain potential arguments and opinions of the authors. Practice updates do not replace independent legal advice provided by an attorney or representative familiar with a client's case. This practice update is accurate as of July 28, 2021; subsequent judicial opinions or other events may materially change the legal analysis contained herein. Because the authors are actively tracking the application of this law in courts across Virginia, this practice update may be revised as needed. Please contact the authors by emailing Sophia Gregg at sophia@justice4all.org.

² SB1181, Gen. Assemb., 2021 Sess. (Va. 2021), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0286+pdf>.

³ 8 U.S.C. § 1101(a)(27)(J).

⁴ 6 USCIS Policy Manual, Part J §§ (A)-(B) (2021).

⁵ *Id.*

3. Must have a valid juvenile court order issued by a state court⁶ in the United States which finds (a) that the individual is dependent on the court, or in the custody of a state agency or department, or another individual or entity appointed by the court; (b) that the individual cannot be reunified with one or both of their parents due to abuse, abandonment, neglect, and/or a similar basis under state law; and (c) that it is not in the individual's best interests to return to their country of nationality or their/their parents' last habitual residence;
4. Must have sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit; and
5. Must be under 21 years of age at the time of filing.⁷

Only once SIJS findings are made (as outlined in requirement #3 above) can an individual then submit an application with the federal government to the U.S. Citizenship and Immigration Services (USCIS). If SIJS is granted by USCIS, the individual may apply for adjustment of status to lawful permanent resident (LPR) once there is a visa available for that individual.⁸

II. Amendment of Va. Code § 16.1-241(A1) to provide more eligible immigrant youth with access to applying for SIJS

In order to qualify for SIJS, an individual must obtain specific factual findings from a state juvenile court. Previously, certain undocumented immigrant youth in Virginia who could have been eligible for SIJS were unable to proceed with their immigration applications due to difficulty in obtaining the necessary state predicate orders required for the SIJS application. While federal law allows individuals eligible for SIJS to apply to USCIS for the classification prior to their 21st birthday, Virginia law generally divests jurisdiction over custody matters from Juvenile and Domestic Relations (J&DR) district courts when a child turns 18 years old. As a result, many immigrant young adults who would otherwise be eligible to apply for SIJS “aged out” of the J&DR Court’s jurisdiction without obtaining the necessary predicate order and were therefore unable to access this important form of immigration relief.

For example, a young person’s case may have been initiated in a J&DR court when a child was 17 years old, but because of court delays and backlogs, difficulties completing international service of process on the absent parent, or other logistical barriers, the child reached the age of 18 before the judge issued the necessary predicate order, and the matter was dismissed.

Likewise, a SIJS-eligible child may have been the subject of various kinds of court orders from a Virginia J&DR court prior to becoming aware that they might be eligible for SIJS, and therefore the orders did not contain the required factual findings for a SIJS application. If the young person “ages out” of the J&DR court’s jurisdiction, they lose the opportunity to seek to apply for this important form of immigration relief because the J&DR court lacked jurisdiction to

⁶ This is often referred to as the “state court predicate order” or “SIJS findings.”

⁷ 8 U.S.C. § 1101(a)(27)(J).

⁸ See Immigrant Legal Resource Center, *Special Immigrant Juvenile Status and Visa Availability* (Jan. 2021), available at

https://www.ilrc.org/sites/default/files/resources/special_immigrant_juvenile_status_visa_availability.pdf

amend the prior order. For these young people, there is often no other pathway to legal immigration status available, and so they lose the chance at a path to residency and stability.

In 2021, Virginia lawmakers sought to expand access to SIJS for these undocumented immigrant youth, albeit not yet to the full extent permitted under federal immigration law. Sen. Scott Surovell (Fairfax/Prince William) introduced SB1181, which amended Va. Code § 16.1-241(A1) to allow:

For the purposes of this subsection only, when the court has obtained jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

As a result of this bill, which passed on a bipartisan basis and was signed into law by Gov. Northam with an effective date of July 1, 2021, J&DR courts may now exercise jurisdiction over some individuals who would otherwise have “aged out” of juvenile proceedings until they reach 21 years of age. During that time, juvenile courts may issue an order with the requisite SIJS factual findings.

Most importantly, the court must have “[already] obtained jurisdiction over the case” prior to the young person’s 18th birthday. In effect, the amendment to § 16.1-241 functions to *retain* the jurisdiction of the J&DR Court over a case already before the court prior to a child reaching 18 years of age, until they reach 21 years of age, for the purpose of seeking an order containing SIJS factual findings. But if an individual has never been subject to the jurisdiction of a Virginia J&DR court, once they turn 18 they still cannot file a case or seek an SIJS predicate order under this new law. Put simply, if the case was filed before the 18th birthday, the court may retain jurisdiction until the 21st birthday, whether the case remains pending or even if the case had already been fully resolved and judgment entered; but if no case was filed before the 18th birthday, the court lacks jurisdiction and no new case may be filed.

III. Suggested Procedural Practice Strategies

The following are suggestions for practitioners as they advocate for clients using the amended law.

A. Cases initiated on or after July 1, 2021

Practitioners should continue to draft pleadings and proposed orders rooted in Virginia law and the best interests of the child standard. While the law authorizes J&DR courts to amend or issue orders after a child reaches 18 years of age, this could trigger a Request for Evidence (RFE) from USCIS, regarding whether the J&DR court had jurisdiction to issue such an order and/or whether the order was sought solely for purposes of obtaining an immigration benefit. Detailed pleadings rooted in state law substantive standards can be of great use to respond to an RFE to show USCIS that the J&DR court had jurisdiction for reasons independent from the SIJS findings of fact and that the order was to protect the youth from further abuse, abandonment, and/or neglect.

i. Cases initiated when a child is 17 years old, on or after July 1, 2021

In cases that will be filed on or after July 1, 2021, and where the child is 17 years old, initial filings should cite to § 16.1-241(A1), authorizing the J&DR courts to retain jurisdiction over an individual until the age of 21, for the purpose of entering SIJS findings of fact.

Virginia jurisprudence has long held that “when a court acquires jurisdiction of the subject matter and the person, it retains jurisdiction until the matter before it has been fully adjudicated,” showing that it has jurisdiction from the point of filing, and “retains” it through the completion of proceedings. *Laing v. Commonwealth*, 205 Va. 511, 514 (1964). Va. Code § 16.1-241(A) also states that the juvenile court has authority over petitions “*filed* at any time by any party with a legitimate interest therein.” (emphasis added). Therefore, jurisdiction vests at the time of filing rather than at the time of adjudication. If the Court cannot set a hearing or issue a final order prior to the child’s 18th birthday, practitioners should argue that the J&DR Court acquired jurisdiction upon the acceptance of the pleadings under § 16.1-241(A) and may retain jurisdiction pursuant to § 16.1-241(A1).

In addition, if a child will imminently turn 18 years old, practitioners should consider concurrently filing a motion for an emergency hearing requesting that the J&DR Court schedule a status hearing prior to the child’s 18th birthday.⁹ If the court sets an initial hearing prior to a child’s 18th birthday, but the judge is unwilling to issue a final order prior to the child’s 18th birthday,¹⁰ consider requesting that the court enter a Temporary Order awarding legal and physical custody to the Petitioner and including the SIJS findings. However, many courts will be reluctant to enter findings of fact regarding, e.g., the impossibility of future reunification on the posture of a Temporary Order; if so, practitioners can ask the court to enter a Temporary Order awarding legal and physical custody to the Petitioner and then later use the newly amended statute to ask that the SIJS findings be included in the final order, to be issued after the young person turns 18 but prior to their 21st birthday.

Ensuring that the child is placed in someone’s custody prior to turning 18 will help satisfy the federal requirement that “that the individual is dependent on the court or in the custody of a state agency or department or another individual or entity appointed by the court,”¹¹ even if specific findings of fact are issued after the young person turns 18 years old. For example, if USCIS issues a Request for Evidence (RFE) related to the final order being issued after the child turns 18 years old, a prior temporary custody determination may provide support for an argument that the Court retained jurisdiction sufficient to satisfy the federal requirements for SIJS.¹² It may also provide the basis for a response demonstrating non-immigration-related

⁹ It is important to check with the local court clerk about the requirements and procedures of the court. Some jurisdictions have forms that are preferred when requesting an emergency hearing.

¹⁰ This could happen, for example, when service of process had not been completed on parent(s) or the guardian *ad litem* has not had the opportunity to complete their investigation.

¹¹ 8 U.S.C. § 1101(a)(27)(J).

¹² In a case prior to the effective date of this new statute, USCIS’s Administrative Appeals Office (“AAO”) decided that in certain circumstances, the Virginia J&DR District Courts do have jurisdiction to enter orders past a child’s 18th birthday. See *Matter of D-N-E-M-*, ID# 4573208 (AAO Jan. 14, 2020). In that case, the Roanoke J&DR District Court had entered a temporary custody order before the child in question turned 18 years of age, and then set the case for a future hearing so that the Court could enter an order of publication for service of process requirements. *Id.* The subsequent hearing was held after the child in question turned 18 years of age and at that hearing the judge entered an order that the child then used to apply for SIJ status. *Id.*

reasons for seeking a court order in response to a USCIS-issued RFE alleging that the individual sought a court order primarily to obtain immigration relief.

B. Cases initiated and completed prior to obtaining SIJS Findings

If a case has been completed without the requisite factual findings, practitioners will need to file a motion to amend a prior order or re-open a case in order to petition the court to issue the predicate findings under the new law. The change in law may be considered a material change in circumstances that warrants modification of the order to include the SIJS factual findings.¹³

For cases initiated and closed prior to July 1, 2021, practitioners may need to explain to the court why the new legislation applies retroactively. Generally, new legislation conferring substantive rights or obligations does not apply retroactively. However, legislation changing procedural rules or regulations will apply at the time of the relevant proceeding, because “it is the demand or claim that cannot be interfered with by legislative enactment.”¹⁴ “The law in force at the time of the trial must prevail” for statutes that do not create a “new cause of action and take away no existing right[s] or remed[ies]” and that “only provide a forum for asserting an existing right.”¹⁵ Further, “procedural provisions of the statute in effect on the date of trial control the conduct of the trial insofar as practicable.”¹⁶

As such, in any case asking a J&DR court to apply this law retroactively to amend a previous order or enter a new order in a case that previously resolved without SIJS findings, argue that the new law is a jurisdictional statute because it clarifies the scope of jurisdiction for evaluating factual findings required by a state or federal statute. Rather than conferring any new substantive rights onto any individual, it merely establishes that the J&DR courts may continue to exercise their jurisdiction over an individual “until such person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile.”¹⁷ Because the new statute simply allows for the temporal extension of jurisdiction and does not establish any new substantive rights, the change in law is procedural rather than substantive; therefore, it should apply at the time of the hearing or trial on a motion to re-open the case or amend a previous order, regardless of when the initial case was filed.

¹³ See previous practice advisory strategies for what constitutes material change sufficient for amending previous orders, LAJC-Ayuda-Poarch Law-Cruz Law, *Practice Advisory: Strategies for Obtaining SIJS Factual Findings in Virginia after July 1, 2019*, (July 29, 2019), <https://www.justice4all.org/wp-content/uploads/2019/07/SIJS-Practice-Advisory-FINAL-07-29-2019.pdf>. Note that while explanations of what constitutes material change are still accurate as of this practice advisory, other parts of the practice advisory no longer reflect current law.

¹⁴ *Crawford v. Halsted*, 61 Va. 211, 224-25 (Va. 1871) (“The mode of conducting a suit, or the rules of practice regulating it, are not the subject of vested rights.”); see also, *Virginia & West Virginia Coal Co. v. Charles*, 254 F. 379, 383 (4th Cir. 1918); *Wyatt v. Va. Dept. of Social Services*, 397 S.E.2d 412, 414 (Va. Ct. App. 1990); *Walke v. Dallas, Inc.*, 161 S.E.2d 722 (Va. Ct. App. 1968) (“As a general rule statutes relating to remedies and procedure are given a retrospective construction. . . . [S]tatutes relating to practice and procedure generally apply to pending actions and those subsequently instituted, although the cause of action may have arisen before.” (Internal citations omitted.)).

¹⁵ *Walke*, 161 S.E.2d at 724-25.

¹⁶ *Smith v. Commonwealth*, 219 S.E.2d 135, 148 (1978).

¹⁷ Va. Code § 16.1-241(A1).

i. Cases initiated when a child was 17 years old prior to July 1, 2021, and the child “aged out”

Practitioners may request that the court re-open the case and enter an order *nunc pro tunc*. The power to amend an order *nunc pro tunc* is an inherent and discretionary power of the Court. *Council v. Commonwealth*, 198 Va. 288, 293 (1956); *see also Antisdell v. Ashby*, 279 Va. 42, 51 (2010). The Court may use its power to amend the record *nunc pro tunc* when “the justice and truth of the case requires it.” *Council*, 198 Va. at 292. Moreover, Va. Code § 16.1-227 sets the purpose and intention of the juvenile code and grants judges “all necessary and incidental powers and authority, whether legal or *equitable* in nature” in order that the welfare and rights of the child and family be protected. This broad power is discretionary and “should be made with great caution and on the most conclusive evidence.” *Council*, 198 Va. at 293.

In the event a J&DR court raises the issue of mootness, practitioners can argue that the case is not moot because an actual controversy and concrete injury remains.¹⁸ Amending an order *nunc pro tunc* to include the requested SIJS findings of fact will allow the child to apply for SIJS, thus protecting them from further abuse, neglect, and/or abandonment and remedy the injury.

ii. Cases initiated and completed prior to a young person’s 18th birthday prior to July 1, 2021, but orders did not contain the necessary findings of fact

The amendment to § 16.1-241(A1) benefits cases where a J&DR court initially exercised jurisdiction over a matter prior to a child reaching the age of 18. For example, this amendment will benefit cases where a custody order was entered or a child has been placed in foster care, but the order lacked the requisite SIJS predicate findings of fact.

If the young person is currently between the ages of 18 and 21, and the court entered a custody order but did not issue SIJS findings at all or the findings are not satisfactory to USCIS, practitioners can file a [Motion to Amend or Review Order \(Form DC-630\)](#). The change in law may be considered a material change in circumstances that warrants modification of the order to include the SIJS factual findings.¹⁹

Practitioners may also request that the court enter the amended or final order *nunc pro tunc*, as described above.

¹⁸ *See E.C. v. Virginia Dep’t of Juvenile Justice*, 283 Va. 522, 530 (2012) (holding that a case is not moot where an actual controversy remains). In *E.C.*, the Court found that while E.C. had been released from confinement, his habeas petition was not moot because the J&DR court’s order required that he register as a sex offender. *Id.* at 536. Therefore, the Supreme Court of Virginia found that since E.C. faced a continuing and collateral consequence remediable by the habeas petition, the case was not moot and the court’s jurisdiction had not been extinguished. In other words, a controversy existed because there were continuing adverse effects and relief that could still be afforded. *Id.*; *see also Tazewell Cty. Sch. Bd. v. Brown*, 267 Va. 150, 157-58 (2004).

¹⁹ *See* previous practice advisory strategies for what constitutes material change sufficient for amending previous orders, LAJC-Ayuda-Poarch Law-Cruz Law, *Practice Advisory: Strategies for Obtaining SIJS Factual Findings in Virginia after July 1, 2019*, (July 29, 2019), <https://www.justice4all.org/wp-content/uploads/2019/07/SIJS-Practice-Advisory-FINAL-07-29-2019.pdf>. Note that while explanations of what constitutes material change are still accurate as of this practice advisory, other parts of the practice advisory no longer reflect current law.

IV. Conclusion

The authors of this practice update are closely monitoring the application of the amendment throughout the Virginia J&DR courts. Because the amendment only came into effect on July 1, 2021, it is unknown how the Virginia J&DR courts will implement or exercise their jurisdiction. As successful practice strategies and advocacy come to our attention, this practice update may be revised. We encourage practitioners from all jurisdictions to share their experiences and advocacy strategies by emailing Sophia Gregg at sophia@justice4all.org.

V. Appendix

- A. Sample Custody Petition with Preemptive Reference to § 16.1-241
- B. Sample Proposed Custody Order
- C. Sample Motion for an Amended Order

Appendices

- Appendix A: Custody Petition with Preemptive Reference to § 16.1-241**
- Appendix B: Proposed Custody Order**
- Appendix C: Motion for an Amended Order**

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
IN THE COUNTY OF [COUNTY]

IN RE: [child's name])
A Minor Child) HEARING DATE
)
DOB: [date]) DOCKET NO. JJ

PETITION FOR SOLE LEGAL AND PHYSICAL CUSTODY

COMES NOW the Petitioner, [Petitioner's name], by Counsel and moves this Court for an entry of an Order granting her sole legal and physical custody, and in support thereof states to the Court as follows:

1. That [child's name] (hereinafter referred to as "the minor child") was born on [date] in [location].
2. That the minor child's parents are [mother] (hereinafter referred to as "mother" or "Petitioner") and [father] (hereinafter referred to as "father").
3. That the minor child is a child whose custody needs determination pursuant to the Virginia Code [cite relevant sections from § 16.1-241(A)(1), (2) and/or (3)].
4. That the minor child has resided with and has been in the care of the Petitioner since [date]. He has resided at [address], in [county], Virginia, within the jurisdiction and venue of this Court, since [date]. Virginia Code § 16.1-241; the Uniform Child Custody Jurisdiction and Enforcement Act; and/or Virginia Code § 20-146.12. Petitioner is a person having a legitimate interest in this proceeding and is the [mother or other term descriptive of the relationship] of the minor child.
5. [summary of facts of the abuse, abandonment, or neglect, with references to affidavits or other submitted evidence].

6. [references to the best interest factors applicable to the facts of abuse, abandonment, or neglect – *see* Va. Code § 20-124, §20-124.2(B)].

7. That the Petitioner is willing to assume sole legal and physical custody of the minor child, to provide a home for him, and to provide a stable life for him. [description of equities in favor of a grant of custody].

8. That in the care of the Petitioner, the minor child has been thriving and is being well-cared for. [any positive facts which support this assertion, such as performance in school].

9. That reunification with the minor child’s father is not viable due to his [abuse/abandonment/neglect] and demonstrated unwillingness to care for the minor child. *See* Va. Code § 16.1-228(1) (abuse/neglect); 22 V.A.C. § 40-705-30(B)(1); VA Code § 16.1-228(3) (abandonment); *Todd v. Copeland*, 55 Va. App. 773, 794-95 (2010) (defining abandonment as "the renunciation or abdication of responsibility over a child . . . or a voluntary relinquishment of the child without cause").

10. That legal notice has been given to all proper and necessary parties; and that all provisions of the Juvenile and Domestic Relations District Court law have been duly complied with in assuming jurisdiction over the minor child; and that the minor child is within the jurisdiction of this Court; and all determinations have been made in accordance with the standards set forth in Va. Code § 16.1-278.4, § 16.1-278-5, § 16.1-278.6 or 278.8 or 278.15 and §§ 20-124.1 through 20-124.6.

11. That this Court has the authority to make factual findings required by state or federal law to enable a child to apply for or receive a state or federal benefit, pursuant to Va. Code § 16.1-241(A1).

12. That, if this child reaches the age of eighteen prior to the determination of this case, this Court has the authority to “continue to exercise its jurisdiction until [the child] reaches

21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).” Va. Code § 16.1-241(A1).

13. Additionally, Virginia jurisprudence has long held that “when a court acquires jurisdiction of the subject matter and the person, it retains jurisdiction until the matter before it has been fully adjudicated,” showing that it has jurisdiction from the point of filing, and “retains” it through the completion of proceedings. *Laing v. Commonwealth*, 205 Va. 511, 514 (1964). Va. Code § 16.1-241(A) also states that the juvenile court has authority over petitions “*filed* at any time by any party with a legitimate interest therein.” (emphasis added). Therefore, jurisdiction vests at the time of filing rather than at the time of adjudication. As such, this Court acquired jurisdiction when these pleadings were filed and accepted and may retain jurisdiction until a final order is issued.

14. That in consideration of the best interest factors contained in Va. Code § 20-124.3, it is in the best interests of the minor child that the Petitioner be granted sole legal and physical custody of the minor child. *See also* Va. Code § 20-124.2(B).

WHEREFORE, the Petitioner prays that the Court award her the following relief:

- a. Award her sole legal and physical custody of the minor child; and
- b. Award such other relief as the nature of this cause requires and the court deems necessary and proper.

A Proposed Order is attached.

Respectfully submitted,

Petitioner, [Petitioner's name]

Exhibit List

Exhibit 1: Birth Certificate of Minor Child with Certified English Translation

Exhibit 2: Affidavit of Petitioner

Exhibit 3: Proposed Order for Custody

**Appendix B:
Proposed Custody Order**

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
IN THE COUNTY OF [COUNTY]

IN RE: [child's name])
A Minor Child) HEARING DATE
)
DOB: [date]) DOCKET NO. JJ

ORDER

This matter came before the Court upon the Petition for Sole Legal and Physical Custody of the above-named minor child filed by Petitioner, [Petitioner's name], by Counsel. Upon consideration of the pleadings and such other evidence as may be before this Court and the best interests of the minor child, the Court doth therefore FIND

1. That [child's name] (hereinafter referred to as "the minor child") was born on [date] in [country]. The minor child's parents are [mother] (hereinafter referred to as "mother" or "Petitioner") and [father] (hereinafter referred to as "father").

2. That the minor child is a child whose custody needs determination pursuant to Va. Code §16.1-241(A)(2) and (3). This court has jurisdiction to make an initial custody determination pursuant to Va. Code § 20-146.12(A)(1), because the minor child has been residing in Virginia continuously since [date], a period of more than six months prior to the commencement of this proceeding. Further, this court has jurisdiction to make specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit and may continue to exercise its jurisdiction for these purposes, until the child reaches 21 years of age, pursuant to Va. Code § 16.1-241(A1).

3. That the minor child currently resides with the Petitioner, his [mother], at [address].

4. That reunification with the minor child's father is not viable due to his [abuse/abandonment/neglect] of the minor child. [insert recitation of facts regarding abuse, abandonment and/or neglect]. There has been no "relationship existing between" the father and the minor child, the father has not played a role in the minor child's upbringing and care, and has demonstrated his lack of desire "to maintain a close and continuing relationship with the child." Va. Code § 20-124.3(3), (5), and (7). [cite to relevant best interest factors found in Va. Code relevant to your case].

5. In consideration of Va. Code § 20-124.3, that it is in the minor child's best interest to be placed in the custody of the Petitioner, in Virginia. That it would not be in the minor child's best interest to return to [country], as he does not have a suitable caretaker in that country. [insert facts to support this assertion, such as inadequate services to meet health or educational needs of child or risk factors faced by child in home country]. Rather, it is in the minor child's best interests to remain with the Petitioner in Virginia.

6. That legal notice has been given to all proper and necessary parties; and that all provisions of the Juvenile and Domestic Relations District Court law have been duly complied with in assuming jurisdiction over the minor child; and that the minor child is within the jurisdiction of this Court; and all determinations have been made in accordance with the standards set forth in Va. Code § 16.1-241(A1), § 16.1-278.4, § 16.1-278.5, § 16.1-278.6, § 16.1-278.8, or § 16.1278.15, and §§ 20-124.1 through 20-124.6. The father was served via [insert description of service accomplished].

7. The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing. It is therefore

ADJUDGED, ORDERED and DECREED that the Petitioner, [Petitioner's name], shall be appointed as the sole legal and physical custodian of [child's name] with full authority to act on behalf of and make decisions concerning the minor child. It is further

ORDERED that each party intending a change of address shall give 30 days' advance written notice of such change of address to the Court and other parties, pursuant to Va. Code § 20-124.5. Unless otherwise provided in this Order, this notice shall contain the minor child's full name, the case number of this case, the party's new telephone number and new street address and if different, the party's new mailing address. Unless otherwise provided in this Order, the notice shall be mailed by first class or delivered to this Court and to the other party. Further, the Clerk of this Court shall forward three attested copies of this Order to Counsel of Record.

ENTERED this _____ day of _____ 2021.

JUDGE

I ASK FOR THIS:

Attorney for Petitioner

SEEN AND AGREED:

Appendix C:
Motion for an Amended Order

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
IN THE COUNTY OF [COUNTY]

IN RE: [child's name])
[A Minor Child (if applicable)]) HEARING DATE
)
DOB: [date]) DOCKET NO. JJ [# on exiting order]

MOTION FOR AN AMENDED ORDER

The Petitioner, [Petitioner's name], by undersigned counsel, respectfully moves this Court for an amended order, a copy of which is attached hereto, and in support of this motion states as follows:

1. In Virginia, when determining whether a custody order should be modified, the court must apply the two-pronged *Keel v. Keel* test: “(1) whether there has been a material change in circumstances since the most recent custody award; and (2) whether a change in custody would be in the best interests of the child.” 303 S.E.2d 917, 921 (Va. Ct. App. 2005).

2. In the 2021 session, the Virginia General Assembly passed S.B.1181 amending Va. Code § 16.1-241(A1) to authorize this Court to make “specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit” to “continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of . . . amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).”

3. This legislative amendment extends the jurisdiction of this Court to include young people up to 21 years old who require existing court orders to be amended, and thus represents a substantive and significant change to justify an amended order. *Slonka v. Pennline*, 440 S.E.2d

423, 424 (Va. App. 1994) (holding that a substantive change to the statutory support guideline scheme, when combined with an earlier child support award which varies significantly from the presumptively correct guideline amount, provides sufficient justification for a modification hearing).

4. On [date], Petitioner, appeared before the Court for a hearing on her petition for custody of [child's name] (hereinafter referred to as “the minor child”), who was present as well.

[Also present was the minor child’s guardian ad litem, (“GAL”).]

5. [If applicable] Ancillary to the petitions for custody and visitation, Petitioner requested that the Court make a set of factual findings in furtherance of the minor child’s best interests pursuant to Va. Code § 20-124.3.

6. Under of the Immigration and Nationality Act, a minor child may petition the federal immigration authorities for “Special Immigrant Juvenile” Status,” or “SIJ Status,” if a state court with jurisdiction over the custody and care of children enters factual findings holding that, among other things, the child has been abused, abandoned, or neglected by at least one parent. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11 (as amended by the Trafficking Victims Protection Reauthorization Act (“TVPRA”) of 2008, Public Law 110-457).

7. While the Court ordered that the minor child be placed in the sole legal and physical custody of the Petitioner, the Court [declined to/did not] make any [of the requested (if previously requested)] factual findings because [explain reason court did not make findings] .

OR, E.G.

While the Court ordered that the minor child be placed in the sole legal and physical custody of the Petitioner and made most of the requested factual findings, the Court did not state that it is not in the minor child’s best interest to return to [country] in the factual findings and does not specifically cite to the Virginia laws under which the factual findings were made.

8. Because there has been a significant change in circumstances based on the amended law, which specifically applies to Petitioner's case, Petitioner, respectfully moves this court to amend the order dated [date] to include the following findings of fact: [list findings of fact]. Amending the order to include these specific findings of fact will enable [child's name/relationship to petitioner] to apply for SIJ status, and in turn further his best interests. [connect facts to § 20-124.3 factors].

WHEREFORE, Petitioner, [Petitioner's name], through undersigned counsel, respectfully requests that this Court amend the orders entered on [date] to include the specified findings of fact so that [child's name] can apply for a significant federal benefit and further his best interests. A Proposed Order is attached.

Respectfully submitted,

Petitioner, [Petitioner's name]

CERTIFICATE OF SERVICE

I certify that on this [DATE], I mailed by regular mail a copy of the foregoing MOTION
FOR AN AMENDED ORDER to:

[GAL &] RESPONDENT

Petitioner, [Petitioner's name]